

From: [Chieplv, Martha S NWO](#)
To: [Lenz, Garv W \(Ward\) MVR](#); [Mcclendon, Dannv D MVS](#); [Gesi, David W NWD](#); [Acuff, Tonva L MVD](#); [Morningstar, Desiree L HQ02](#); [Mulligan, Karen HQ](#)
Cc: [Cimarosti, Daniel E NWO](#); [Renschler, Jason J NWO](#); [Navlor, Steven E NWO](#); [Lawrence, Karen L NWO](#)
Subject: FW: Elevation of DAPL issue by Retired Gen Crear (UNCLASSIFIED)
Date: Monday, April 06, 2015 8:18:50 PM
Attachments: [Letter to DAPL Aprii 2015.doc](#)
[Energy Trans reply.pdf](#)

Classification: UNCLASSIFIED

Caveats: NONE

15 minutes before the end of the day Gen Crear contacted me and indicated he would be contacting our commanders. He also asked for the names of the MSC Reg Program Managers. His intent is to influence our DEs to adopt a larger action area advocated by the Service which essentially negates DAPLS need to coordinate under Section 10. Below is information I provided to our DE as he indicated he would be calling him in case your DE is contacted.

I will be in a training course tomorrow but checking emails at lunch and breaks.

Martha

ALCON: Retired General Crear just contacted me regarding DAPL's disagreement over the Corps position on scope of analysis for Endangered Species Act (ESA) compliance for the DAPL project with the US Fish and Wildlife Service (USFWS). As DAPL's consultant he intends to reach out to MVS, MVR, and Omaha Commanders entreating them to adopt a larger action area and suggests DAPL will be also writing to their congressional representatives.

BLUF: While both the Corps and USFWS have coordinated extensively about the ESA consultation process and scope, the Corps districts have not yet made any effects determinations for threatened or endangered species. Adopting a larger scope would alleviate DAPL from proceeding with Section 10 consultation process which is predictability longer. The Corps is committed to further dialog with the USFWS and has advocated an approach used in another linear pipeline projects where the USFWS issued a Biological Opinion that addresses ESA issues for the entire pipeline but clearly details required actions for those where the Corps is the compliance responsibility under Section 7 and other actions where DAPL is the compliance responsibility under Section 10.

Background: DAPL has provided preconstruction notifications for crossings which may involve consultation with the USFWS for compliance under the ESA as part of the Corps Clean Water Act and Section 10 compliance determination via nationwide permit verifications.

For purposes of determining our scope of analysis, it is the Corps' responsibility to define the permit action and our action area. The permit action in this case is defined as the discharge of dredged or fill material into waters of the United States for the construction of pipeline crossings. Based on this action, we have determined that the action areas for purposes of fulfilling our responsibilities under Section 7 of the ESA are limited to pipeline crossings in jurisdictional waters of the United States and the immediately adjacent uplands. The USFWS believes the action area should be larger and has indicated it may refuse to consult. DAPL's letter entreats the Corps to adopt the larger action area advocated by USFWS.

We have been coordinating extensively with the USFWS articulating the basis for our action areas and scope of analysis. The Corps determination is consistent with other linear pipeline crossings, court cases, and guidance from MSC/HQTRS.

We've discussed this issue and position with DAPL and in the process of drafting a response to their 24 March letter that details DAPL is free to provide the USFWS as much information as it wishes with regards to threatened and

endangered species associated with the pipeline corridor in order for the USFWS to analyze impacts to species on non-federalized portions (>99%) of the pipeline. However, any Biological Assessment that we submit to the USFWS for our consultation requirements, must be specific to our action areas.

Way Forward: As lead district Omaha Regulatory is coordinating a response to DAPL with MVS, MVR, MSC's (MVD and NWD), and HQTRS. We remain committed to further coordination with USFWS advocating a way forward similar to other pipeline projects. It is premature to assume that a similar way forward will not occur. It is recommended that Commanders allow the consultation process to proceed and not be influenced by DAPL.

I am available to discuss the particulars and provide talking points if needed. I will be sharing this information with my counterparts in MVR and MVS as well as alerting MSCs and HQTRS.

Martha
Omaha Regulatory

Classification: UNCLASSIFIED
Caveats: NONE

Classification: UNCLASSIFIED
Caveats: NONE